

BILL NO. 4493

ORDINANCE NO. _____

AN ORDINANCE TO AUTHORIZE THE MAYOR TO EXECUTE AN AGREEMENT WITH MISSOURI DEPARTMENT OF ECONOMIC DEVELOPMENT TO ASSIST WITH PLANNED IMPROVEMENTS TO THE WEST PLAINS ADVANCED MANUFACTURING CENTER.

NOW THEREFORE, be it resolved by the City of West Plains as follows:

Section 1: That the Mayor is hereby authorized to execute the contract between the City of West Plains, Missouri and Missouri Department of Economic Development. (EXHIBIT A).

Section 2: That this Ordinance shall be in full force and effect from and after its day of passage and approval.

PASSED AND APPROVED THIS 20th DAY OF MARCH 2017.

CITY OF WEST PLAINS, MISSOURI

BY: _____
MAYOR JACK PAHLMANN

ATTEST:

CITY CLERK MALLORY PREWETT

Eric R. Greitens
Governor



Mike Downing, CEcD
Acting Director

March 10, 2017

The Honorable Jack Pahlmann
Mayor of the City of West Plains
West Plains City Hall
1910 Holiday Lane
West Plains, MO 65775

Dear Mayor Pahlmann:

The Missouri Department of Economic Development ("DED") has located a source of funds to assist with the planned improvements of the West Plains Advanced Manufacturing Center. In this regard, enclosed is an agreement between the DED and City of West Plains which outlines the mutual expectations and obligations for the use of the funds.

If you agree with the terms of this agreement, please sign the agreement and return the original to my attention at 301 West High Street, Harry S Truman State Office Building, Room 680, Jefferson City, MO 65101. If you have any questions you may contact me at (573) 526-7863.

Sincerely,

A handwritten signature in blue ink that reads "Stacey Hirsch".

Stacey Hirsch
Director of Financial Systems

:sh

Enclosure

c: Mr. John Murrell, South Central Council of Governments
Ms. Sallie Hemenway, Director of Business and Community Services, DED
Mr. Brian Bear, DED General Counsel

301 W. High St. • P.O. Box 1157 • Jefferson City, MO 65102-1157
www.ded.mo.gov • (573) 751-4962 • Fax (573) 526-7700

**AGREEMENT BETWEEN
THE CITY OF WEST PLAINS
AND
MISSOURI DEPARTMENT OF ECONOMIC DEVELOPMENT**

This Agreement ["Agreement"] between the State of Missouri Department of Economic Development ["DED"] and the City of West Plains ["City"] is effective _____, 2017.

WITNESSETH:

WHEREAS, the City plans to make improvements to the West Plains Advanced Manufacturing Facility, and;

WHEREAS, general revenue funds have been appropriated to DED by the 98th General Assembly, Second Regular Session, in HB 2007 that may assist City with those improvements; and

WHEREAS, the Parties desire to set forth their mutual expectations and obligations for the use of those funds;

WHEREAS, the City understands no award of a contract shall be made if the City contemplates performing work pursuant to the contract at a site outside the United States, unless one of the conditions of Executive Order 04-09 is met as set out in the Agreement;

WHEREAS, the City shall only utilize personnel authorized to work in the United States in accordance with applicable federal and state laws. This includes but is not limited to the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) and INA Section 274A as set out in the Agreement; and

WHEREAS, the City and DED agree to be bound by the State of Missouri, Division of Purchasing and Materials Management Terms and Conditions as set out in Attachment A of the Agreement.

NOW THEREFORE, in consideration of the promises and mutual representations herein contained, DED and the City covenant and agree as follows:

1. The period of this Agreement is from the date of signature through June 15, 2017. All funds must be expended prior to that date.
2. Pursuant to the terms of this Agreement, the City of West Plains is eligible to receive funding in the amount of up to \$150,000 to assist with eligible project costs. There are no other funds available to cover project shortfalls and the City shall hold harmless the state from the obligation of any activities pursued under this Agreement.

2.1 The parties understand that pursuant to Article IV Section 27 of the Missouri Constitution, the Governor may control the rate at which any appropriation is expended, and may reduce the expenditures of the state or any of its agencies. Accordingly, the parties agree that the DED may impose additional withholdings in the future if deemed necessary.

3. **ELIGIBLE PROJECT COSTS.** The parties acknowledge that eligible project costs are those necessary and reasonable costs required to accomplish the renovation of the facility and may include architect, engineering and design costs, inspection costs, construction materials and labor costs, insurance costs and other typical soft and hard costs associated with a public facility renovation. The funds may also be used to contract for administrative oversight, file management, record keeping and other related services with the South Central Ozark Council of Governments.
4. **PROJECT DESCRIPTION/PROJECT BUDGET/SOURCES AND USES**
 - a. The parties acknowledge that the project may include:
 - i. investigation and repair, as needed to the West exterior wall in order to ensure its structural soundness;
 - ii. improvements necessary for compliance with ADA;
 - iii. installation of siding on the North and East exterior walls;
 - iv. installation of signage in front of and on the facility;
 - v. installation of exterior lighting; and
 - vi. construction of a concrete canopy at the main entrance, or
 - vii. any combination of these or any other approved improvements to the facility.
 - b. The parties agree that the funding of the project shall be set forth in a project budget which shall be developed and submitted to DED, in writing, identifying the specific project activities and line item cost estimates for each, prior to the initiation of work on the facility.
 - c. The parties agree that a project sources and uses must be developed identifying any other funds to be used in these same project activities. The sources and uses document must be submitted in writing to DED at the same time as the project budget. The documents may be combined into one format. If activities exceed the amount of State/DED funding described herein, all other funds must be identified and secured prior to the notice to proceed provided to any contractor or service provider.
 - d. If at any time during the construction, budget shortfalls occur, the City must amend the detailed budget identifying the movement of funding from one line

item to another to cover such costs, along with the elimination or reduction of the scope of work on the activity from which funds were taken.

5. DRAW OF FUNDS FROM STATE

- a. The City must establish an "electronic fund transfer" with the Office of Administration. If one exists already, it may be used for this project.
- b. Funds may be drawn upon costs incurred.
- c. Requests for funds shall be made to the DED on the letterhead of the City, signed by the authorized representative indicating the amount, the budget line item, the total draws to date and the fund balance remaining, as well as a statement of satisfaction of work completed. The city may request as many draws as desired or may pay the invoices from city funds and draw State funds once for reimbursement as allowed under city ordinance and with proper authority.

6. COMPLIANCE AND RECORDKEEPING

- a. State funds may only be drawn for items or activities procured consistent with or exceeding state procurement standards. All documentation of procurement must be made available to the State upon request.
- b. All costs for which State funds are used must be secured by written contracts or agreements.
- c. Funds used to pay costs associated with construction work must comply with all state prevailing wage laws.
- d. All contracts and agreements for which State funds are used for construction must contain requirements for adequate bonding and insurance.
- e. All contracts and agreements for which State funds are used must include all applicable equal employment opportunity requirements as established by State law or City ordinance.
- f. All contracts shall contain language that protects and holds harmless the State from any claims by third parties resulting in negligent or intentional action of any contractor or service provider.
- g. The City shall ensure that all contractors and service providers shall comply with State laws regarding:
 - i. The employment of illegal aliens by requiring proof of participation in E-verify or other verification services acceptable to DED, see Exhibit A;
 - ii. Registration with the Secretary of State to do business in the State of Missouri and in good standing;
 - iii. Listing on the state debarred contractors list;
 - iv. Delinquency of any uncontested taxes to the State.

7. DED reserves the right to terminate and sever this agreement with or without cause at any time, for the convenience of the State of Missouri, without penalty or recourse, by giving written notice to the City at least thirty (30) days prior to the effective date of such termination. City shall be entitled to receive just and equitable compensation for work completed prior to the effective date of termination. Termination for breach of the terms of the Agreement may occur at any time without formal written notice.
8. Any written notice to this Agreement shall be deemed sufficient when deposited in the United States mail, postage prepaid, and addressed to the City at its address as listed on the state vendor file, or as specified in this Agreement.
9. This Agreement shall be construed according to the laws of the State of Missouri. The parties shall comply with all local, state and federal laws and regulations relating to the performance of this Agreement.
10. The signers of this Agreement warrant that they are acting officially and properly on behalf of their respective institutions and have been duly authorized, directed and empowered to execute this Agreement.
11. This Agreement represents the entire understanding between DED and the City regarding this subject and supersedes all prior written or oral communications between the parties regarding this subject.
12. It is agreed by DED and the City that any action at law, suit in equity, or other judicial proceeding to enforce or construe this Agreement, or regarding its alleged breach, shall be instituted only in the Circuit Court of Cole County, Missouri.

The City agrees to adhere to all requirements set forth in the Agreement and its attachments.

[The remainder of this page is intentionally blank]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first written above.

FOR:
THE CITY OF WEST PLAINS

FOR:
MISSOURI DEPARTMENT OF
ECONOMIC DEVELOPMENT

Jack Pahlmann
Mayor

Mike Downing
Acting Director

Date

Date

**STATE OF MISSOURI
DIVISION OF PURCHASING AND MATERIALS MANAGEMENT**

1.1.1 TERMS AND CONDITIONS

This contract expresses the complete agreement of the parties and performance shall be governed solely by the specifications and requirements contained herein. Any change must be accomplished by a formal signed amendment prior to the effective date of such change.

1. APPLICABLE LAWS AND REGULATIONS

- a. The contract shall be construed according to the laws of the State of Missouri (state). The contractor shall comply with all local, state, and federal laws and regulations related to the performance of the contract to the extent that the same may be applicable.
- b. To the extent that a provision of the contract is contrary to the Constitution or laws of the State of Missouri or of the United States, the provisions shall be void and unenforceable. However, the balance of the contract shall remain in force between the parties unless terminated by consent of both the contractor and the state.
- c. The contractor must be registered and maintain good standing with the Secretary of State of the State of Missouri and other regulatory agencies, as may be required by law or regulations.
- d. The contractor must timely file and pay all Missouri sales, withholding, corporate and any other required Missouri tax returns and taxes, including interest and additions to tax.
- e. The exclusive venue for any legal proceeding relating to or arising out of the contract shall be in the Circuit Court of Cole County, Missouri.
- f. The contractor shall only utilize personnel authorized to work in the United States in accordance with applicable federal and state laws and Executive Order 07-13 for work performed in the United States.

2. INVOICING AND PAYMENT

- a. The State of Missouri does not pay state or federal taxes unless otherwise required under law or regulation. Prices shall include all packing, handling and shipping charges FOB destination, freight prepaid and allowed unless otherwise specified herein.
- b. The statewide financial management system has been designed to capture certain receipt and payment information. For each purchase order received, an invoice must be submitted that references the purchase order number and must be itemized in accordance with items listed on the purchase order. Failure to comply with this requirement may delay processing of invoices for payment.
- c. The contractor shall not transfer any interest in the contract, whether by assignment or otherwise, without the prior written consent of the state.
- d. Payment for all equipment, supplies, and/or services required herein shall be made in arrears unless otherwise indicated in the specific contract terms.
- e. The State of Missouri assumes no obligation for equipment, supplies, and/or services shipped or provided in excess of the quantity ordered. Any unauthorized quantity is subject to the state's rejection and shall be returned at the contractor's expense.
- f. All invoices for equipment, supplies, and/or services purchased by the State of Missouri shall be subject to late payment charges as provided in section 34.055, RSMo.
- g. The State of Missouri reserves the right to purchase goods and services using the state purchasing card.

3. DELIVERY

Time is of the essence. Deliveries of equipment, supplies, and/or services must be made no later than the time stated in the contract or within a reasonable period of time, if a specific time is not stated.

4. INSPECTION AND ACCEPTANCE

- a. No equipment, supplies, and/or services received by an agency of the state pursuant to a contract shall be deemed accepted until the agency has had reasonable opportunity to inspect said equipment, supplies, and/or services.
- b. All equipment, supplies, and/or services which do not comply with the specifications and/or requirements or which are otherwise unacceptable or defective may be rejected. In addition, all equipment, supplies, and/or services which are discovered to be defective or which do not conform to any warranty of the contractor upon inspection (or at any later time if the defects contained were not reasonably ascertainable upon the initial inspection) may be rejected.
- c. The State of Missouri reserves the right to return any such rejected shipment at the contractor's expense for full credit or replacement and to specify a reasonable date by which replacements must be received.
- d. The State of Missouri's right to reject any unacceptable equipment, supplies, and/or services shall not exclude any other legal, equitable or contractual remedies the state may have.

5. CONFLICT OF INTEREST

Officials and employees of the state agency, its governing body, or any other public officials of the State of Missouri must comply with sections 105.452 and 105.454, RSMo, regarding conflict of interest.

6. WARRANTY

The contractor expressly warrants that all equipment, supplies, and/or services provided shall: (1) conform to each and every specification, drawing, sample or other description which was furnished to or adopted by the state, (2) be fit and sufficient for the purpose intended, (3) be merchantable, (4) be of good materials and workmanship, and (5) be free from defect. Such warranty shall survive delivery and shall not be deemed waived either by reason of the state's acceptance of or payment for said equipment, supplies, and/or services.

7. REMEDIES AND RIGHTS

- a. No provision in the contract shall be construed, expressly or implied, as a waiver by the State of Missouri of any existing or future right and/or remedy available by law in the event of any claim by the State of Missouri of the contractor's default or breach of contract.
- b. The contractor agrees and understands that the contract shall constitute an assignment by the contractor to the State of Missouri of all rights, title and interest in and to all causes of action that the contractor may have under the antitrust laws of the United States or the State of Missouri for which causes of action have accrued or will accrue as the result of or in relation to the particular equipment, supplies, and/or services purchased or procured by the contractor in the fulfillment of the contract with the State of Missouri.

8. CANCELLATION OF CONTRACT

- a. In the event of material breach of the contractual obligations by the contractor, the state may cancel the contract. At its sole discretion, the state may give the contractor an opportunity to cure the breach or to explain how the breach will be cured. The actual cure must be completed within no more than 10 working days from notification, or at a minimum the contractor must provide state within 10 working days from notification a written plan detailing how the contractor intends to cure the breach.
- b. If the contractor fails to cure the breach or if circumstances demand immediate action, the state will issue a notice of cancellation terminating the contract immediately.
- c. If the state cancels the contract for breach, the state reserves the right to obtain the equipment, supplies, and/or services to be provided pursuant to the contract from other sources and upon such terms and in such manner as the state deems appropriate and charge the contractor for any additional costs incurred thereby.
- d. The contractor understands and agrees that funds required to fund the contract must be appropriated by the General Assembly of the State of Missouri for each fiscal year included within the contract period. The contract shall not be binding upon the state for any period in which funds have not been appropriated, and the state shall not be liable for any costs associated with termination caused by lack of appropriations.

9. BANKRUPTCY OR INSOLVENCY

Upon filing for any bankruptcy or insolvency proceeding by or against the contractor, whether voluntary or involuntary, or upon the appointment of a receiver, trustee, or assignee for the benefit of creditors, the contractor must notify the state immediately. Upon learning of any such actions, the state reserves the right, at its sole discretion, to either cancel the contract or affirm the contract and hold the contractor responsible for damages.

10. INVENTIONS, PATENTS AND COPYRIGHTS

The contractor shall defend, protect, and hold harmless the State of Missouri, its officers, agents, and employees against all suits of law or in equity resulting from patent and copyright infringement concerning the contractor's performance or products produced under the terms of the contract.

11. NON-DISCRIMINATION AND AFFIRMATIVE ACTION

In connection with the furnishing of equipment, supplies, and/or services under the contract, the contractor and all subcontractors shall agree not to discriminate against recipients of services or employees or applicants for employment on the basis of race, color, religion, national origin, sex, age, disability, or veteran status unless otherwise provided by law. If the contractor or subcontractor employs at least 50 persons, they shall have and maintain an affirmative action program which shall include:

- a. A written policy statement committing the organization to affirmative action and assigning management responsibilities and procedures for evaluation and dissemination;
- b. The identification of a person designated to handle affirmative action;
- c. The establishment of non-discriminatory selection standards, objective measures to analyze recruitment, an upward mobility system, a wage and salary structure, and standards applicable to layoff, recall, discharge, demotion, and discipline;
- d. The exclusion of discrimination from all collective bargaining agreements; and
- e. Performance of an internal audit of the reporting system to monitor execution and to provide for future planning.

If discrimination by a contractor is found to exist, the state shall take appropriate enforcement action which may include, but not necessarily be limited to, cancellation of the contract, suspension, or debarment by the state until corrective action by the contractor is made and ensured, and referral to the Attorney General's Office, whichever enforcement action may be deemed most appropriate.

12. AMERICANS WITH DISABILITIES ACT

In connection with the furnishing of equipment, supplies, and/or services under the contract, the contractor and all subcontractors shall comply with all applicable requirements and provisions of the Americans with Disabilities Act (ADA).

13. FILING AND PAYMENT OF TAXES

The commissioner of administration and other agencies to which the state purchasing law applies shall not contract for goods or services with a vendor if the vendor or an affiliate of the vendor makes sales at retail of tangible personal property or for the purpose of storage, use, or consumption in this state but fails to collect and properly pay the tax as provided in chapter 144, RSMo. For the purposes of this section, "affiliate of the vendor" shall mean any person or entity that is controlled by or is under common control with the vendor, whether through stock ownership or otherwise.

14. COMMUNICATIONS AND NOTICES

Any notice to the contractor shall be deemed sufficient when deposited in the United States mail postage prepaid, transmitted by facsimile, transmitted by e-mail or hand-carried and presented to an authorized employee of the contractor.

Revised 02/15/08

EXHIBIT A
BUSINESS ENTITY CERTIFICATION, ENROLLMENT DOCUMENTATION,
AND AFFIDAVIT OF WORK AUTHORIZATION

BUSINESS ENTITY CERTIFICATION:

The bidder/contractor must certify their current business status by completing either Box A or Box B on this Exhibit.

Business entity, as defined in section 285.525, RSMo pertaining to section 285.530, RSMo is any person or group of persons performing or engaging in any activity, enterprise, profession, or occupation for gain, benefit, advantage, or livelihood. The term "business entity" shall include but not be limited to self-employed individuals, partnerships, corporations, contractors, and subcontractors. The term "business entity" shall include any business entity that possesses a business permit, license, or tax certificate issued by the state, any business entity that is exempt by law from obtaining such a business permit, and any business entity that is operating unlawfully without such a business permit. The term "business entity" shall not include a self-employed individual with no employees or entities utilizing the services of direct sellers as defined in subdivision (17) of subsection 12 of section 288.034, RSMo.

Note: Regarding governmental entities, business entity includes Missouri schools, Missouri universities, out of state agencies, out of state schools, out of state universities, and political subdivisions. A business entity does not include Missouri state agencies and federal government entities.

BOX A - CURRENTLY NOT A BUSINESS ENTITY

I certify that _____ (Company/Individual Name) **DOES NOT CURRENTLY MEET** the definition of a business entity, as defined in section 285.525, RSMo pertaining to section 285.530, RSMo as stated above, because: (check the applicable business status that applies below)

- I am a self-employed individual with no employees; **OR**
- The company that I represent utilizes the services of direct sellers as defined in subdivision (17) of subsection 12 of section 288.034, RSMo.

I certify that I am not an alien unlawfully present in the United States and if _____ (Company/Individual Name) is awarded a contract for the services requested herein under _____ (Bid/SFS/Contract Number) and if the business status changes during the life of the contract to become a business entity as defined in section 285.525, RSMo pertaining to section 285.530, RSMo then, prior to the performance of any services as a business entity, _____ (Company/Individual Name) agrees to complete Box B, comply with the requirements stated in Box B and provide the _____ (insert agency name) with all documentation required in Box B of this exhibit.

Authorized Representative's Name
(Please Print)

Authorized Representative's Signature

Company Name (if applicable)

Date

EXHIBIT A, continued

BOX B – CURRENT BUSINESS ENTITY STATUS

I certify that _____ (Business Entity Name) **MEETS** the definition of a business entity as defined in section 285.525, RSMo pertaining to section 285.530, RSMo as stated above.

Authorized Business Entity
Representative's Name
(Please Print)

Authorized Business Entity
Representative's Signature

Business Entity Name

Date

As a business entity, the bidder/contractor must perform/provide the following. The bidder/contractor should check each to verify completion/submission:

- Enroll and participate in the E-Verify federal work authorization program (Website: http://www.dhs.gov/xprevprot/programs/gc_1185221678150.shtm; Phone: 888-464-4218; Email: e-verify@dhs.gov) with respect to the employees hired after enrollment in the program who are proposed to work in connection with the services required herein; AND
- Provide documentation affirming said company's/individual's enrollment and participation in the E-Verify federal work authorization program. Documentation shall include a page from the E-Verify Memorandum of Understanding (MOU) listing the bidder's/contractor's name and the MOU signature page completed and signed, at minimum, by the bidder/contractor and the Department of Homeland Security – Verification Division; (if the signature page of the of the MOU lists the bidder's/contractor's name, then no additional pages of the MOU must be submitted); AND
- Submit a completed, notarized Affidavit of Work Authorization provided on the next page of this Exhibit.

